

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ESMELING L. BAHENA,

Plaintiff,

v.

LEMON, *et al.*,

Defendants.

Case No. 1:22-cv-01585-JLT-BAM (PC)

**ORDER GRANTING REQUEST FOR
EXTENSION OF TIME TO FILE WAIVER
OF SERVICE OF PROCESS**

(ECF No. 32)

**Waiver of Service of Process Due: August 9,
2023**

Plaintiff Esmeling L. Bahena (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s second amended complaint against Defendant Mendoza for excessive force and deliberate indifference to medical care in violation of the Eighth Amendment.

On June 1, 2023, the Court ordered electronic service on Defendant Mendoza and directed the California Department of Corrections and Rehabilitation (“CDCR”) to file a Notice of E-Service Waiver advising the Court which defendant(s) would be waiving service of process without the need for personal service. (ECF No. 29.) That order also required the California Office of the Attorney General (“OAG”) to file, within 30 days from the filing of the Notice of E-Service Waiver, a separate waiver of service of process for any defendant waiving service under Federal Rule of Civil Procedure 4(d)(1). (*Id.*) CDCR returned the Notice of E-Service Waiver

1 indicating that Defendant Mendoza intends to waive service on June 9, 2023. (ECF No. 31.)
2 Therefore, a waiver of service of process from the OAG for Defendant Mendoza is due on or
3 before July 10, 2023.

4 On July 10, 2023, counsel for the OAG, by special appearance, filed a motion requesting a
5 thirty-day extension of time to file a waiver of service of process for Defendant Mendoza. (ECF
6 No. 32.) Counsel from the OAG states that the extension is necessary to determine whether the
7 OAG will be representing Defendant Mendoza in this case. Until that determination is made, the
8 OAG is unable to file a waiver of service of process on behalf of Defendant Mendoza. Counsel
9 expects a thirty-day extension will allow enough time to determine whether the OAG will be
10 representing Defendant Mendoza. (*Id.*)

11 Having considered the request, the Court finds that there is good cause to grant an
12 extension of time for Defendant Mendoza to file a waiver of service of process. Fed. R. Civ. P.
13 6(b). The Court further finds that Plaintiff will not be prejudiced by the brief extension.

14 Accordingly, the motion for an extension of time, (ECF No. 32), is HEREBY GRANTED.
15 Defendant Mendoza shall file a waiver of service of process on or before **August 9, 2023**.

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17 IT IS SO ORDERED.

18 Dated: July 10, 2023

19 /s/ Barbara A. McAuliffe
20 UNITED STATES MAGISTRATE JUDGE
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